

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

In Re:	)	
	)	
Eastman Healthcare & Rehab, LLC	)	Case No. 1:16-bk-10277 NWW
	)	Chapter 11
Debtor.	)	

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REORGANIZED DEBTOR'S MOTION TO REOPEN BANKRUPTCY CASE AND TO  
WAIVE FEE TO REOPEN CASE

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**NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING**

**Notice is hereby given that:**

**Pursuant to E.D. Tenn. LBR 9013-1(h), the court may consider this matter without further notice or hearing unless a party in interest files an objection. If you object to the relief requested in this paper, you must file with the clerk of court at United States Courthouse, 31 East 11<sup>th</sup> Street, Chattanooga, Tennessee 37402, an objection within (21) days from the date this paper was filed and serve a copy on the movant's attorney, David J. Fulton, Esq., 620 Lindsay Street, Suite 240, Chattanooga, TN 37403. If you file and serve an objection within the time permitted, the court will schedule a hearing and you will be notified.**

**If you do not file an objection within the time permitted, the court will consider that you do not oppose the granting of the relief requested in this paper and may grant the relief requested without further notice or hearing.**

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

Eastman Healthcare & Rehab, LLC, ("Eastman"), Reorganized Debtor ("Debtor"), hereby moves this Court for an order reopening the above referenced bankruptcy case ("Bankruptcy Case") pursuant to 11 U.S.C. § 350(b) and Bankruptcy Rule 5010 and in support thereof states as follows:

1. The Court has jurisdiction pursuant to 28 USC § 1334.
2. The Debtor instituted its Chapter 11 voluntary proceeding on January 22, 2016.

3. The Court confirmed the Debtor's Plan of Reorganization on September 13, 2017.
4. The Bankruptcy Case was closed on February 8, 2019.
5. The Debtor seeks to re-open its Chapter 11 case to file Debtor's Complaint for Injunctive Relief, Sanctions and Damages Resulting from Dodge NH, LLC's Violation of the Confirmation Order and confirmed Plan.
6. The Debtor's Plan at Section 12, "Retention Of Jurisdiction", deals with the jurisdiction of the Bankruptcy Court after the confirmation of the Debtor's Plan.
7. Paragraph 12.03, entitled "Further Orders" provides that:

The Bankruptcy Court will retain jurisdiction to facilitate the performance of the Plan by entering, consistent with the provisions of the Plan, any further necessary or appropriate order regarding enforcement of the Plan and any provision thereof.....
8. The Debtor is seeking to reopen its case and is requesting the Bankruptcy Court to exercise its jurisdiction to enforce rights of the Debtor and its creditors that arose under the Bankruptcy Code.
9. Rule 9024(1), F.B.R.P. provides that a motion to reopen under Rule 5010 is not subject to the 1-year time limit that generally applies to motions for relief from an order of the court under Rule 60-b of the Federal Rules of Civil Procedure.
10. Dodge NH, LLC, (the "Landlord") is the landlord for Debtor's Eastman, Georgia nursing home ("Eastman Facility"). The Debtor's Edwards Redeemer nursing home facility in Oklahoma City, OK (the "Oklahoma Facility") was recently closed because of imminent threat of forced closure by the State of Oklahoma due to issues related to the physical condition of the property. The Oklahoma Facility's Landlord was the same Landlord as the Eastman Facility in Georgia. The leases of the Eastman Facility and Oklahoma Facility contained cross-default

clauses such that a default in the lease in one facility constituted a default in the lease on the other facility.

11. Dodge NH, LLC has filed a complaint against the Debtor seeking, inter alia, possession of the Eastman Facility, a turnover of the facility's operations, the appointment of receiver for the Eastman Facility, damages, attorneys' fees and other relief. A copy of the complaint (the "Complaint") is attached hereto as Exhibit "A".

12. The Debtor strongly opposes the relief sought in the complaint and strongly denies the allegations in the Complaint regarding default.

13. The Court will recall that when the State of Georgia closed New Beginning Care, LLC's Abbeville nursing home, several of the residents passed away within days or weeks of the transfer because they suffered Transfer Trauma Relocation Stress Syndrome.

14. The licensed beds in the Eastman facility are Eastman's property as is the license and provider numbers. Therefore, if Dodge NH, LLC is permitted to take possession of the facility, the residents located there will have to be transferred and be subjected to the above Syndrome.

15. The Debtor is current in its Plan obligations to Dodge NH, LLC, the U.S. Government for income taxes and for withholding taxes, the State of Georgia for bed taxes and other creditors in the case. The Debtor's loss of the Eastman Facility will cause it to breach its Plan with its other creditors and will terminate any further payments to those creditors.

16. The Debtor seeks to reopen its Chapter 11 case to file an adversary proceeding against Dodge NH, LLC seeking injunctive relief, sanctions and damages against Dodge NH, LLC to prevent the closing of its Eastman Facility and the resulting immediate default in the Debtor's Plan of Reorganization.

17. Debtor requests that the Court waive the fee to reopen this bankruptcy case since it paid the fee to reopen the case under {Doc 188} which was denied by the Court without prejudice.

WHEREFORE, movant respectfully requests that the Court enter an order reopening this Bankruptcy Case.

Respectfully submitted,

SCARBOROUGH & FULTON

By: /s/David J. Fulton  
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*Attorneys for Reorganized Debtor*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. The below listed parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system. This 18<sup>th</sup> day of November, 2019.

Attached Creditor Matrix

/s/ David J. Fulton  
David J. Fulton, Esq.